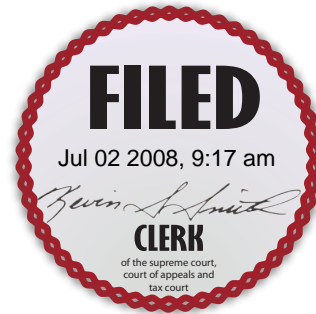


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

COREY D. TYNER,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A02-0706-CR-523
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0512-MR-12

July 2, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Following a jury trial, Appellant-Defendant Corey Tyner was convicted of Murder, ¹ a felony, for which he received a sixty-year sentence in the Department of Correction. In this appeal, Tyner challenges the sufficiency of the evidence to support his conviction. We affirm.

FACTS AND PROCEDURAL HISTORY

On December 13, 2005, Michelle Morris, Tyner's former girlfriend and the mother of his children, called him and asked him to pick her up at her home at 3754 Monroe Street in Gary, and drive her to an errand before 2:00 p.m. Tyner arrived around 1:00 p.m. Morris's boyfriend, Berniel Fuller, lived with her at this address. At some point Fuller returned home to find Tyner there. Tyner and Fuller began to argue. Tyner pulled out a gun and ordered Morris to sit on the sofa next to Fuller. Tyner accused Morris and Fuller of showing him disrespect. Fuller responded that Tyner was being disrespectful. Angered by Fuller's response, Tyner ordered Morris to go into one of the bedrooms. As soon as Morris entered the bedroom, she heard gunshots from the living room.

Tyner then ordered Morris to drive Fuller's mother's vehicle, which Fuller had borrowed and parked at the house. Tyner told Morris that he could not be seen in Fuller's mother's vehicle, so Morris drove Fuller's mother's vehicle and Tyner drove his own mother's car to a designated location. After they met at that location, they switched cars and parted directions again, because Tyner did not want the two cars to be seen together. Morris subsequently met up with Tyner at another location set by Tyner. By this point, Tyner was on foot. Tyner drove Morris, in his mother's car, to Morris's cousin's house,

¹ Ind. Code § 35-42-1-1 (2005).

ordered her to keep quiet about what had happened, and told her to call Fuller's friends and mother acting as if she were trying to find Fuller. Tyner then left in his mother's vehicle. Morris went into her cousin's bedroom and called Tyner, Fuller's mother and Fuller's friend.

Morris remained at her cousin's house for most of the evening. Eventually, Morris told her mother that Tyner had shot Fuller. Morris's father, James Hope, later discovered blood stains on the living room wall and the sofa at Morris's house. Hope also noticed two shell casings on the living room floor in front of the sofa. Hope did not testify that he saw Fuller's body in Morris's house.

Morris and her mother called Gary Police Sergeant Thomas Jordan, who agreed to meet them. Morris reported the events of the afternoon to Sergeant Jordan.

Morris and her mother then drove to Tyner's mother's house, where they found Tyner. Tyner had Morris's house keys and would not surrender them to her because he was "not done with them yet."

After talking to Morris, Sergeant Jordan drove to Morris's house. Upon arriving, Sergeant Jordan and other assisting officers entered the home and immediately noted the strong odor of bleach and cleaning materials. The house was clean, the furniture was rearranged, and the sofa that Hope had observed earlier was missing. One corner of the living room carpeting had been cut out. Officers found a trail of blood droplets leading into the back alley from the back yard, and blood stains on a trash can in the alleyway. These and other blood drops led to a smoldering pile of burned furniture that had blood on it. Crime scene investigators also detected blood in the carpet pad and on the walls

leading to the back door. The blood in the house and the trash can was later determined to be Fuller's.

Earlier that evening, around 8:00 p.m., the Gary Fire Department had been dispatched to a vehicle fire. Gary Police Detective Jeffrey Hemphill discovered Fuller's burned remains in the back seat. Fuller's cause of death was determined to be two gunshot wounds to his head. Tyner was arrested in Jacksonville, Florida, and was returned to Lake County. Tyner claimed he was at the Gary Health Department having his blood drawn at the time of the murder.

The State charged Tyner on December 20, 2005, with murder. On November 13, 2006, a jury trial commenced and ended in mistrial three days later. Tyner's second trial began on April 2, 2007. On April 10, 2007, the jury found Tyner guilty as charged. At a May 10, 2007 sentencing hearing, the trial court sentenced Tyner to serve sixty years in the Department of Correction. On June 11, 2007, Tyner filed his notice of appeal, which the trial court granted. This appeal follows.

DISCUSSION AND DECISION

Tyner's sole challenge on appeal is to the sufficiency of the evidence to support his conviction of murder. Our standard of review for sufficiency-of-the-evidence claims is well-settled. We do not reweigh the evidence or judge the credibility of the witnesses. *Kien v. State*, 782 N.E.2d 398, 407 (Ind. Ct. App. 2003), *trans. denied*. We consider only the evidence which supports the conviction and any reasonable inferences which the trier of fact may have drawn from the evidence. *Id.* We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have

drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. *Id.* It is the function of the trier of fact to resolve conflicts of testimony and to determine the weight of the evidence and the credibility of the witnesses. *Jones v. State*, 701 N.E.2d 863, 867 (Ind. Ct. App. 1998).

To convict Tyner of murder, the State had to prove that he knowingly or intentionally killed Fuller. *See* Ind. Code § 35-42-1-1. Tyner challenges his conviction by claiming that there was inadequate evidence to establish beyond a reasonable doubt that he was the person who killed Fuller. Tyner bases his challenge on what he claims was the undisputed evidence that he was either at the Gary Health Department, having lunch, or picking up his mother at the time of the murder. “The State is not required to rebut directly a defendant’s alibi. It may disprove the alibi by proving its own case in chief beyond a reasonable doubt.” *Stephenson v. State*, 742 N.E.2d 463, 498 (Ind. 2001).

According to Gary Health Department Records, Tyner was at the Gary Health Department having blood drawn at 1:01 p.m. on the day of the murder. Although it is unclear from the time of the blood draw how much additional time Tyner spent at the clinic, the supervisor at the Gary Health Department testified that the typical amount of time that a patient would spend at the clinic would be about thirty minutes. The supervisor further testified anywhere from five to twenty of those minutes are spent prior to the blood draw.

Contrary to Tyner’s claim, his presence at the Gary Health Department did not eliminate the possibility he had murdered Fuller. The State never alleged an exact time of the murder. Morris testified that Tyner had arrived “around 1:00 p.m.”. Morris

specifically testified that she could not remember exactly what time Tyner had arrived at her home. The testimony of the supervisor of the Gary Health Department suggests that Tyner could have been finished at the clinic within five minutes of having his blood drawn at 1:01 p.m. Although Tyner claimed to have been at McDonald's after his visit to the Gary Health Department, the jury was within its discretion to discredit this self-serving testimony in favor of the State's witness's testimony that Tyner was present at Morris's and Fuller's home in the early afternoon and shot Fuller. As for Tyner's mother's testimony that he picked her up from work at 2:30 p.m., this testimony does not eliminate the early afternoon window of time during which Tyner would have had the opportunity to kill Fuller.

Tyner did not present any evidence, other than his own testimony, regarding his whereabouts between 1:01 p.m. and 2:30 p.m. On the other hand, the State presented direct testimony that Tyner entered Fuller's home, quarreled with him, and shot him. Accordingly, we conclude that there was sufficient evidence to support Tyner's conviction.

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.